

TENTATIVE RULINGS

FOR: September 1, 2015

Please note that the court will strictly enforce filing deadlines for papers filed in support of and in opposition to law and motion matters, and may exercise its discretion to disregard a late filed paper, pursuant to California Rules of Court, rule 3.1300(d).

When calculating filing deadlines for papers to be filed within a certain number of court days from a hearing date, parties should exclude court holidays and court closure days.

Unlawful Detainer Cases - No tentative ruling will be posted because access to records is not permitted until 60 days after the complaint is filed. Parties must appear for all unlawful detainer demurrers, motions to quash, and other matters.

Court Reporting Services - Official court reporters are not provided by the Court in proceedings for which such services are not legally mandated. These proceedings include civil law and motion matters. If counsel wish to have the hearing on their civil law and motion matter reported, they must arrange for a private court reporter of their choosing to be present. The Napa County Bar Association has further information about local private court reporters. Go to <http://napacountybar.org/court-reporting-services/> for further information.

Attorneys or parties should confer with each other to avoid having more than one court reporter present for the same matter.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.- 1111 Third St.)

Conservatorship of Donohoe, Mary Anne

26-59649

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the court finds the conservator is acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on September 1, 2017 at 8:30 a.m. in Dept. I. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

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In the Matter of Tonia Noel McCutchan

26-66820

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition for name change is GRANTED without need for appearance.

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In the Matter of Roberta Jo Soegaard

26-66822

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition for name change is GRANTED without need for appearance.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Klein Plastering v. David Clark, et al.

26-64173

MOTION TO TAX COSTS

TENTATIVE RULING:

After judgment was entered in favor of plaintiff Klein Plastering (õKleinö) following a jury trial, Klein filed a memorandum of costs in the amount of \$15,794.69. Defendants David Clark and Bobbe Clark (collectively, õClarksö) subsequently filed a motion to tax costs.

The Clarks argue the memorandum of costs is untimely based on the May 19, 2015 mailing of the Clerk of Court's Notice of Entry of Judgment pursuant to Code of Civil Procedure section 664.5. (Hardy Decl., Ex. B.) Klein avers the memorandum of costs is timely based on a Notice of Entry of Judgment it filed with the Court on July 10, 2015. (Rose Decl., Ex. B.) Neither party disputes that Klein served the memorandum of costs on July 17, 2015. (Hardy Decl., Ex. D.)

õA prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of mailing of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first.ö (Cal. Rules of Court, rule 3.1700(a)(1).) The Court õmay extend the times for serving and filing the cost memorandum . . . for a period not to exceed 30 days.ö (*Id.*, rule 3.1700(b)(3).) õThe time provisions relating to the filing of a memorandum of costs, while not jurisdictional, are mandatory.ö (*Sanabria v. Embrey* (2001) 92 Cal.App.4th 422, 426, quoting *Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co.* (1990) 223 Cal. App. 3d 924, 929.)

The first clause of rule 3.1700(a)(1) applies to the facts in the case at bar. On May 19, 2015, the Clerk of Court mailed the Notice of Entry of Judgment pursuant to Code of Civil Procedure section 664.5. The mailing of this document occurred first; that is, prior to Klein's filing of its Notice of Entry of Judgment on July 10, 2015. Klein tellingly does not mention or reference the Clerk of Court's Notice of Entry of Judgment in its opposition. As a result, Klein had 15 days from May 19, 2015, to file its memorandum of costs. Even with a 30 day extension, Klein filed its memorandum of costs well after the time-period permitted under the California Rules of Court.

Accordingly, the Clark's motion to tax costs is GRANTED.